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12 UNITED STATES DISTRICT COURT  
13 EASTERN DISTRICT OF WASHINGTON  
14 AT SPOKANE

15 COMMUNITY ASSOCIATION FOR )  
16 THE RESTORATION OF THE ) No. 04-3060-LRS  
17 ENVIRONMENT, a Washington nonprofit )  
18 corporation, ) **ORDER ON FARIA'S FRCP 59(e)**  
19 ) **MOTION TO ALTER OR**  
20 Plaintiff, ) **AMEND JUDGMENT**  
21 )  
22 v. )  
23 )  
24 SMITH BROTHERS DAIRY, since )  
25 purchased by NELSON FARIA DAIRY, )  
26 LLC, )  
27 )  
28 Defendants. )

29 Having considered the parties' stipulation and proposed amendments to the  
30 Judgment and Order on Relief, and finding good cause therefore, IT IS HEREBY

31 **ORDER ON**  
32 **FARIA'S FRCP 59(e) MOTION** - 1

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1 ORDERED that the Court's Judgment for the Plaintiff entered January 12, 2012  
 2 (ECF No. 209) pursuant to the Memorandum of Decision (ECF No. 201) and the  
 3 Order on Relief (ECF No. 207), shall be amended as follows:

4 1. Paragraph 12 of the Order on Relief shall be modified to provide as  
 5 follows: *Faria shall comply with the terms of the current CAFO General Permit,*  
 6 *which has been administratively extended, except those provisions of the CAFO*  
 7 *Permit which require compliance with a Nutrient Management Plan (NMP)*  
 8 *approved by Ecology. Until Faria obtains an Ecology-approved NMP, Faria shall*  
 9 *comply with its current NMP. When Ecology issues Faria the current CAFO*  
 10 *General Permit, Faria shall comply with the terms of that Permit until such time as*  
 11 *a new CAFO Permit is issued.*

12 2. Paragraph 30 of the Order on Relief shall be modified to provide as  
 13 follows: *Faria shall implement the revised NMP within thirty (30) calendar days*  
 14 *of receipt of approval by the Conservation District. If the Conservation District*  
 15 *does not approve the revised NMP within ninety (90) calendar days of receipt, the*  
 16 *parties shall send a joint request to the Conservation District seeking an answer*  
 17 *about the NMP approval. Once Ecology approves Faria's NMP, Faria will*  
 18 *comply with the Ecology-approved NMP.*

19 3. Paragraph 35 of the Order on Relief shall be modified to provide as  
 20 follows:

21 35(a)(iii): *Faria shall construct and/or implement the remedial*  
 22 *method(s) set forth herein, if any are required, within one hundred twenty (120)*  
 23 *calendar days from completion of the Lagoon Evaluation, weather permitting. If*  
 24 *regulatory review or other good cause delays Faria's performance under this*  
 25 *subparagraph, then Faria shall notify CARE in writing of the cause for delay as*  
 26 *soon as reasonably possible, but no more than 10 days from when it first learns of*

1 *the possible delay. Faria shall not be in non-compliance with the requirements of*  
 2 *this subparagraph if such notice is provided and if such delays are wholly outside*  
 3 *of its control.”*

4 *35(b)(iii): “If decreasing the herd size is chosen, then no more than*  
 5 *60 days from the decision to reduce herd size, Faria shall certify to CARE in*  
 6 *writing that the herd size has been reduced and how it was reduced (e.g., sale or*  
 7 *culling of animals and the animals associated with such changes). If adding extra*  
 8 *lagoon capacity is chosen, then Faria shall construct and/or implement any*  
 9 *remedial method within ninety (90) calendar days from completion of the Lagoon*  
 10 *Evaluation, weather permitting. If regulatory review or other good cause delays*  
 11 *Faria’s performance under this subparagraph, then Faria shall notify CARE in*  
 12 *writing of the cause for delay as soon as reasonably possible, but no more than 10*  
 13 *days from when it first learns of the possible delay. Faria shall not be in non-*  
 14 *compliance with the requirements of this subparagraph if such notice is provided*  
 15 *and if such delays are wholly outside of its control.*

16 4. The last two sentences in paragraph 40 of the Order on Relief shall be  
 17 modified to provide as follows: *The certification shall be in the form included as*  
 18 *Attachment A to this Order for year 2012. For the remainder of the term of this*  
 19 *Order, the certification shall be in the form included as Attachment B to this*  
 20 *Order.*

21 5. Paragraph 45 of the Order on Relief shall be modified so that the  
 22 reference to paragraphs 43-54 is replaced with a reference to paragraphs 43-44.

23 6. Paragraph 47 of the Order on Relief shall be modified to provide as  
 24 follows: *Faria shall submit the information identified in ¶ 46 associated and*  
 25 *paired with each field, which shall be identified by total acreage block, unit and*  
 26 *field number, to CARE at least ten (10) calendar days before applying liquid or*

1 *solid manure to those fields, and shall provide the following information in written*  
 2 *format: Additionally, paragraph 47(b) of the Order on Relief shall be modified to*  
 3 *provide as follows: For spring, 2012, CARE shall have 15 calendar days to review*  
 4 *and comment on Faria's proposed protocols. For the remainder of the term of*  
 5 *this Order, CARE shall have 10 calendar days to review and comment on Faria's*  
 6 *proposed protocols. Any dispute shall be subject to dispute resolution.*

7 7. Paragraph 49(b) of the Order on Relief shall be modified to provide as  
 8 follows: *For applications that occur more than 10 calendar days apart, Faria*  
 9 *shall include sample analyses of each manure application event for total Nitrogen,*  
 10 *Ammonium N, Nitrate plus Nitrate N, Total Phosphorus, and Total solids.*

11 8. Paragraph 63 of the Order on Relief shall be modified to provide as  
 12 follows: *All tile drain monitoring sites are to be sampled between 48 and 72 hours*  
 13 *of manure application, as well as a minimum of twice during the irrigation season*  
 14 *and within 48 hours of a rainfall event exceeding 0.4 inches of rain within a 24-*  
 15 *hour period. Analyses shall include the same parameters and quantification limits*  
 16 *as proposed for groundwater wells.*

17 9. The following paragraph 72 shall be added to the Order on Relief:

18 72. *Faria's obligation to comply with the requirements of this Order*  
 19 *shall be deferred or modified to the extent caused by a force majeure. Force*  
 20 *majeure, for purposes of this Order, is defined as any event arising from causes*  
 21 *beyond the control of Faria, that delays or prevents the performance of any*  
 22 *obligation required by this Order, despite Faria's best efforts to comply with the*  
 23 *Order. Force majeure includes, but is not limited to:*

24 a. *Delays caused by government agencies, including but not*  
 25 *limited to Grant County and the Department of Ecology, in reviewing, approving*  
 26 *or modifying documents submitted by Faria;*

b. *Delays caused by third parties that prevent the Dairy from securing necessary supplies, materials, or products;*

c. *Delays caused by the failure of CARE or its consultants in fulfilling its obligations under this Order;*

d. *Delays necessitated by circumstances that pose an imminent threat to public health, safety or the environment;*

e. *The intentional acts or omissions of third parties that cause injury or damage to the Dairy facility or its operations;*

f. *Government acts, legislation or regulations affecting the CAFO industry that affirmatively prohibit any action required by this Order;*

g. *Acts of God, including fire, flood, extreme weather conditions, catastrophic equipment failure, or other unavoidable casualties.*

*Delays caused by any force majeure acts shall be documented by Faria and an explanation shall be provided in writing to CARE's representatives within ten (10) business days of the condition giving rise to the act alleged to be force majeure. Failure to provide the above mentioned documentation and notification to CARE shall be deemed a waiver of this provision.*

IT IS SO ORDERED. The District Executive shall forward copies of this Order to counsel of record.

Dated this 9th day of March, 2012.

*s/Lonny R. Suko*

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Lonny R. Suko  
U.S. District Court Judge